

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TERRANCE D. BUTLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-175
	)	Judge Arthur J. Schwab/
COMMONWEALTH OF PENNSYLVANIA,	)	Magistrate Judge Amy Reynolds Hay
Department of Corrections,	)	
JOSEPH F. DESUTA,	)	
Superintendent,	)	
MELISSA PETERS, Health Care	)	
Administrator,	)	
DR. MORGAN, Health Care	)	
Director,	)	
	)	
Defendants.	)	RE: DOC. #s 18 & 20

**ORDER**

AND NOW, this 30<sup>th</sup> day of December, 2005, after the plaintiff, Terrance D. Butler, filed an action in the above-captioned case, and after defendant Morgan removed the case to federal court, and after Motions for Summary Judgment were submitted by defendants, and after a Report and Recommendation was filed by the United States Magistrate Judge granting the parties ten days after being served with a copy to file written objections thereto, and no objections having been filed, and upon independent review of the motions and the record, and upon consideration of the Magistrate Judge's Report and Recommendation, which is adopted as the opinion of this Court,

IT IS ORDERED that the Motion for Summary Judgment filed by Defendants Commonwealth of Pennsylvania, Joseph F. Desuta, and Melissa Peters is

granted and the sole federal claim against them is dismissed for failure to exhaust available administrative remedies.

IT IS FURTHER ORDERED that summary judgment is entered in favor of Defendant Morgan on the federal claim against him for the same reason and Defendant Morgan's Motion for Summary Judgment is dismissed as moot.

IT IS FURTHER ORDERED that the Court declines to exercise its supplemental jurisdiction pursuant to 28 U.S.C. § 1367, all federal claims having been dismissed.

IT IS FURTHER ORDERED that the state law claim of negligence is remanded to the Court of Common Pleas of Mercer County pursuant to 28 U.S.C. § 1447(c).

IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if the plaintiff desires to appeal from this Order he must do so within thirty (30) days by filing a notice of appeal as provided in Rule 3, Fed.R.App.P.

s/Arthur J. Schwab  
ARTHUR J. SCHWAB  
United States District Judge

cc: Honorable Amy Reynolds Hay  
United States Magistrate Judge

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